

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

LEONARD LEAFTY	*
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Plaintiff	*
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VS.	*
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MANUEL IRIZARRY, ADMINISTRATOR OF THE ESTATE OF MANUEL IRIZARRY	NO: 3:06CV00043 SWW
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Defendant	*
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**ORDER**

Before the Court is Plaintiff's motion for a default judgment (docket entry #3). After careful review, the Court finds that the clerk should enter default against Defendant under Federal Rule of Civil Procedure 55(a). A hearing on the Plaintiff's motion for default judgment and his request for damages will be set by separate order.

Plaintiff commenced this personal injury action on March 16, 2006, against the Estate of Manuel Irizzary (docket entry #1). On May 8, 2006, before service of the complaint and summons, Plaintiff filed an amended complaint naming as the sole defendant Manuel Irizarry, Administrator of the Estate of Manuel Irizzary (docket entry #2). On May 26, 2006, Plaintiff's counsel filed an affidavit of service, stating that Plaintiff had accomplished service of the complaint and summons on May 18, 2006. On February 2, 2007, the Court entered on order directing Plaintiff to proceed with his claims or risk dismissal for failure to prosecute (docket

entry #5). On April 9, 2007, Plaintiff filed a motion for default judgment, requesting a default judgment in his favor and a hearing to determine damages.

Prior to entering a default judgment, there must be an entry of default under Federal Rule of Civil Procedure 55(a). Rule 55(a) provides for entry of default when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.

The Court has reviewed Plaintiff's affidavit of service and finds that he has accomplished service of process in accordance with Federal Rule of Civil Procedure 4(e) by following the procedure for service provided under Arkansas Rule of Civil Procedure 4(8)(A)(I). The Court further finds that Defendant has failed to timely answer or otherwise respond to the complaint within twenty days as required under Federal Rule of Civil Procedure 12(a).

Accordingly, the Court finds that a clerk's entry of default under Federal Rule of Civil Procedure 55(a) is proper. The Clerk is directed to mail a copy of this order, along with a copy of the entry of default, to Defendant at the address provided in Plaintiff's affidavit of service. A hearing on Plaintiff's motion for default judgment and request for damages will be set by separate order.

IT IS SO ORDERED THIS 12<sup>TH</sup> DAY OF APRIL, 2007.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE